202 726 will at once go and undo the trap which is on their side ; in the morning, the people of Nondwane will know that they must also fly.

D. THE TRIBUNAL OF THE CHIEF.

642 In the Thonga Court there is no separation of powers. The legislative, executive, and judicial powers are all in the hands of the chief, aided by his counsellors. The chief is the supreme authority and his decisions are without appeal.

I. *Legislative affairs.*

671 643 The *chief* makes the laws (p. 382) and presides at discussions which end in a resolution. But his counsellors assist him.

583 Here is an example of such a decision taken at Maphunga's court. There was no uniformity as to the money to be paid for a lobolo, and some fathers claimed as much as £ 20 or £ 30 for their daughters. The great counsellors of the capital decided (tjimba mhaka, viz., to tie the matter) that a lobolo should be £ 15.10 as the maximum. They "tied the matter" with the assent of the chief. Then all the sub-chiefs and counsellors were summoned to the capital. The chief called the roll to ascertain if they were all present. The great counsellor then said to the assembly : "The herds which people claim are too large. Have you gold mines and do you know how to make coins ? Henceforth do not lobola with too much money. £ 15.10 is quite enough!" Every sub-chief, on his return home, called his men and informed them of the decision : "Hi to timhaka! Such are the matters!" said they. The subjects were disappointed. They wept! But they had to accept the decision. To oppose it is taboo! "Psa yila!"

643 645 671 A *native debate* or discussion is conducted on very different lines from those to which we are generally accustomed, nothing ever being put to the vote. The chief presides. A proposition is

1; Junod M-5 (1895-1909) 1927 Thonga

643 645 671 put forward in short sentences, generally interrogative, by one of the counsellors. The assembly listens in silence until the mover concludes with an energetic "Ahina," being the equivalent of "That's all right." (See p. 354.) Another individual elaborates the matter further, saying: "Did you not hear what he said? He said so and so." This is the way of seconding the motion. [142] The debate proceeds, and, little by little, objections are brought forward and the assembly comes to a decision.

Phot. A. Burd.

An habitué of the Nkuna Court.

It often happens that the chief does not say a word; when he see that the counsellors are agreed and if he has no objection, he merely shows his assent by nodding his head. So the decision is arrived at without his intervention and without any vote being taken. The voice of the majority has not been ascertained by any show of hands, but it is generally perceived by intuition in a very remarkable way, and grave counsellors, who have been squatting in a circle all through the discussion, jump to their feet and disperse, knowing perfectly well what has been decided. If however the counsellors do not agree, they put the matter into the hands of the chief, and the chief, after having listened to the arguments pro and con, "cuts the matter" (tjema mhaka) by some short sentences, after which everybody must shout the royal salutation: "Bayete!"

643 609 645 671 When there are two parties present, the debate is conducted according to other rules. For instance, if a stranger wishes to have speech with a chief or to proffer some request, he is generally accompanied by a counsellor. The chief, together with some of his men, receives him either in the hut, if the affair must

643 609 645 671 be secret, or on the square, if there is no objection to making it public. The chief and his men sit on one side, the visitor on the other; if he wishes to conform strictly to all the laws of etiquette, he will first explain the matter to his own Agent General, who will communicate with the chief's special counsellor, repeating the words of the visitor, sentence by sentence; the counsellor will, in his turn, communicate with the chief, again telling him the whole story, as if he had not heard a word of it before. The affair will thus have passed through three hands and the answer should, in due formality, be given through the same channels. These precautions, which seem eminently superfluous, even somewhat ridiculous, to a person unacquainted with Bantu etiquette, evidently proceed from the fact that there are no stenographers or secretaries to furnish any written record of the proceedings, so that it is necessary to have as many witnesses as possible and that these should thoroughly understand the matter under consideration.

II. *Judicial Cases.*

1) Sense of justice.

671 183 641 609 534 As has often been remarked, the Bantus possess a strong sense of justice. They believe in social order and in the observance of the laws and, though these laws are not written, they are universal and perfectly well known. The law is the custom, that which has always been done. The old men, the counsellors and more particularly the counsellors of the capital, are those who can speak authoritatively. But everybody is welcome in the *lubo*, where matters are discussed; even a stranger can take part in the discussion. "No one is excluded, if he speaks rightly; only fools, those who do not know anything" (Mankhelu).

671 644 192 This participation in the discussions of the lubo has developed the sense of law to a wonderful extent amongst the Bantus. They are all born advocates and judges, and take a great interest in this business! No wonder therefore that the Thonga vocabulary

671 possesses a rich store of *judicial expressions*. Here are the most common : *Nau* (pl. milau) means law, custom. *Ku tlula nau*, to jump over the law, means transgression. *Nandju* (pl. *milandju*) means the fault resulting from transgression. This interesting word comes from *ku landja*, to follow. It applies in the first instance to cases which lead to a prosecution, but secondly to any fault. *Ku doha*, is to be wrong and *ku dohela mhunu*, the applicative derivative, to wrong another. *Ku da*, to eat somebody, or *dela*, is also a picturesque expression employed for injury to property. *Ku ramba* (Dj.), *ku rjamela hosin* (Ro.) is the technical expression to designate a complaint lodged before the chief. *Ku riha* (Dj.), *djiha* (Ro.) means to pay a fine, and *rihisa*, *djihisa* (the factitive derivative), to impose a fine.

672 This strong sense of justice however differs from the European on certain points. Owing to their collectivist notions, the Bantus consider relatives as responsible for the debts of their own kin, as we have already seen (p. 332). Another case in which they entertain ideas which seem very strange to us is this ; when anyone has lent you an implement and you make a bad use of it, the fault is as much the lender's as the borrower's. I remember a queer case which took place in my school in Rikatla. Some boys had to go in the afternoon to work in the vegetable garden under the supervision of their overseer. On the way one of them happened to hurt his foot by treading on a thorn. So, when he arrived in the garden, he borrowed a knife from the overseer and began to make sandals of palm-leaf pith. The elder boy entreated him to work. He refused to obey, so the overseer denounced him publicly, when the weekly inquiry into the conduct of the boys was made, on the following Friday. But the temporary shoemaker did not admit to being guilty of anything at all, and his final argument was this : "I cannot understand how Mr. Overseer can accuse me when he himself lent me the knife which I used to carve my sandals!" D. Kidd tells similar stories about Pondos in his "Essential Kafir."

671 So these are differences between Native and European conceptions of justice, and Bantus do not always draw the same conclusions as we do from given premises. Native Commissioners

671 must remember this and, in order to enlighten the Native mind, they must try to find where these differences lie. But these are minor points, and the sense of justice is nevertheless one of the most striking and promising characteristics of the Bantu.

157 Before enumerating the various cases which can be brought
674 before the Native Court, let me remark that, generally speaking, Bantus are very peaceful, law-abiding people, under normal circumstances; when protected against alcoholic excesses they are little addicted to crime. In the Blue Book for Native Affairs of Cape Colony, 1908, the Chief Magistrate of the Transkeian Territory comments on "the general docility of the Natives, the perfect immunity from crimes of violence, which the European population, male and female, enjoys amongst them, and the cheapness of police administration." He adds: "The policing of the Territories, including the Detective Force, costs only 7d. per head of the territorial population, or, counting Chiefs and Headmen whose functions are mainly administrative, 10d., against 6s. 3d. per head for policing the Colony proper. Reports from twenty districts comment on the paucity or absence of crime. Kentani, with a population of 34,000 did not furnish a single case for the Circuit Court. The Magistrates of four districts remark on 'the peaceable and law-abiding character of the Native,' the Magistrate of Kentani adding: 'when kept away from the drink curse'." (*Christ. Express*, Aug. 1908.)

I think the same report might be made in most of the districts of South Africa where Natives still live by themselves.

674 The state of affairs would be very different in the Town
177 locations, where we meet with a great number of men and women of dissolute morals. They are often backsliders who have left the Mission Stations because they did not like to submit to the Christian rule of morality. So they have freed themselves from all restraints, tribal as well as Christian, and, if they have not entirely lost all sense of justice, they, at any rate, do not walk "in the paths of righteousness." I am here only concerned with clan Natives.

538 Here the sense is at once apparent.

6) Mbuti ya shihaha a yi belekeli ntlhambin.
A good goat does not bring forth in the midst of the flock.

I heard this proverb in one of our Synods. One of the Native members wished to exhort his co-delegates to abstain from giving their advice, and voting precipitately on a certain subject : let us rather go outside, and discuss amongst ourselves, and when we have come to an understanding we will come back and vote as one man!

This last example shows how such proverbs are used... They are sometimes quoted in a low voice, so as to be heard only by those whom it is desired to warn. It is an instance of the *phamba* just referred to.

Compare also the proverb quoted (p. 21) in connection with tilling the fields :

Do not look at the weeds and think : Now ! I have tilled a large field !

Do not be satisfied by mere external appearances! Weeds may be plentiful, yet the field be small!

Hundreds of such sayings might be collected (1), though I do not think they are so extensively used as, for instance, in the Sutho tribe, where M. Jacottet told me he collected a thousand of them. The Thongas replace them by riddles, which seem to be more developed amongst this people than in the neighbouring tribes.

II. *Riddles.*

524 I have already described (I. p. 350) the part riddles play in the games of the Thonga village. The riddle, *mhumhana*, consists first in divining where the piece of charcoal is hidden, and in that

671 538 (1) We might also regard as proverbs, and include under this heading, the figurative terminology used to express the principles of right and justice, which are, as it were, a primitive codification of the common law, and to which I have previously referred — as for instance the curious sentence : A cow which has calved is not used for payin a debt. (I. p. 217).

alone (See *Les Ba-Ronga*, p. 414). He pours his drugs into one of the pots brought by the women, adds to them the psanyi of the goat sacrificed for the occasion, and pours all the contents on to the shoulders of the mother, who holds the babes in her lap. After this he pours from some other pot, which contains pure water, and the woman conscientiously washes herself and her children all the while. Until her purification no inhabitant of the village is allowed to eat anything, and the following day it is taboo to work in the fields, for this would prevent the rain from falling. 845 756 783

Amongst the *Nkunas*, the mother of twins sits at the entrance of the hut, and the drug is poured over the roof above the doorway; it leaks through the thatch on to her, and thus both the mother and the hut are purified at the same time.

This preliminary purification being thus accomplished, the woman goes to live in "her shelter," outside the village. She is absolutely shut off from all the other inhabitants. She has her own pots, axe, mortar, pestle, and does all her own cooking. Nobody even pays her a visit, and people only speak to her from a distance. Her children see no one but her. To each is allotted one breast, always the same. To help her in the nursing of twins the mother must "buy" a girl, to whom the care of one of the children is committed. This is a law. It is taboo for a girl, even should she be the elder sister, to "play" with a twin. The payment of £ 1 or ten shillings removes this taboo and the defilement (shisila) connected with it. 845 853 [671] [784]

Women fear that, if they touch anything belonging to the mother of twins, if they smear themselves with her provision of fat, or if the defiled one smears herself with their fat, they will also incur the dreadful misfortune of giving birth to twins. For this reason it is taboo for a mother of twins to draw water except at a certain spot. She must select one place and always go there. When she returns from drawing water, she must pay attention to the little wreath of grass which she wears on her head to help her balance her pot; it must not be thrown away with those used by other women, for fear that they also should become contaminated (tekela). 845 784